

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

ALLERGAN, INC. and DUKE UNIVERSITY,

Plaintiffs,

v.

**WATSON PHARMACEUTICALS, INC.,
WATSON LABORATORIES, INC., and
WATSON PHARMA, INC.,**

Defendants.

Case No. 1:12-CV-321

**STIPULATION OF DISMISSAL WITHOUT PREJUDICE
OF PLAINTIFFS' COUNTS VII, VIII, IX AND X WITH RESPECT TO
U.S. PATENT NOS. 6,403,649 AND 8,017,655**

Plaintiffs Allergan, Inc. and Duke University and Defendants Watson Pharmaceuticals, Inc., Watson Laboratories, Inc., and Watson Pharma, Inc., by counsel, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii)¹, hereby stipulate to the dismissal, without prejudice, of Plaintiffs' Counts VII, VIII, IX, and X with respect to U.S. Patent Nos. 6,403,649 and 8,017,655 as follows:

WHEREAS Defendants Watson Pharmaceuticals, Inc., Watson Laboratories, Inc., and Watson Pharma, Inc. (collectively, "Watson") have certified in connection with ANDA No. 203749 under 21 U.S.C. § 355(j)(2)(A)(vii)(III) and 21 C.F.R. § 314.94(a)(12)(i)(A)(3) that the sale of any product made under ANDA No. 203749 will not begin until after the expiration date of U.S. Patent Nos. 6,403,649 ("the '649 patent") and 8,017,655 (the '655 patent");

¹ There is some authority in the District Courts of the Fourth Circuit that a dismissal of claims should be by Rule 15 rather than Rule 41. However, because under both rules the action may be done by stipulation and the parties have stipulated to the dismissal, the difference here is "technical rather than substantive". Hardee's Food Sys. v. Hallbeck, 2010 U.S. Dist. LEXIS 124844 (E.D. Mo. Nov. 24, 2010).

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties to the above-captioned litigation, that

(1) Counts VII, VIII, IX, and X of the Complaint for Patent Infringement of the '649 and '655 patents and Declaratory Judgment of Infringement of the '649 and '655 patents (Docket No. 1, Case No. 1:12-CV-321) are hereby dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), and each party shall bear its own costs and attorneys' fees as to these Counts.

Respectfully submitted,

Dated: July 11, 2012

/s/ Larry McDevitt
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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing STIPULATION OF DISMISSAL WITHOUT PREJUDICE OF PLAINTIFFS' COUNTS VII, VIII, IX and X WITH RESPECT TO U.S. PATENT NOS. 6,403,649 AND 8,017,655 with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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